

Applicant traverses the rejections of claims 1-6 as being indefinite.

Independent claim 1 specifies an unbonded capping testing system for strength testing of concrete masonry units. The claim is rejected because the recitation “unbonded capping testing system” is allegedly ambiguous. The action states that “it appears from the specification and claim 13 that applicant’s invention is directed to a testing system that is used for strength testing of concrete masonry units”. It is correct that applicant’s invention is directed to a testing system that is used for strength testing of concrete masonry units. However, what is specified in claim 13 is irrelevant to claim 1 as neither depends on the other. Otherwise, the Examiner’s attention is directed to the specification, beginning initially at page 4, where it is described that “in accordance with the invention, there is provided an unbonded capping system 10, see Fig. 1, for compression testing of a concrete masonry unit (CMU) 12”. Essentially, “unbonded capping testing system” is a name for the system. What the system is is defined by the collective elements of claim 1.

Additionally, the Examiner’s attention is directed to the background of the invention where prior testing methods are described which talk about capping a CMU with a compound. With such systems, the capping compound is bonded to the CMU. As described at page 5, lines 4-5, the unbonded capping system provides a quick strength test of the CMU “without being bonded to the CMU”. Thus, the invention relates to a capping system which is unbonded, thus the preamble recitation to “an unbonded capping testing system for strength testing of concrete masonry units”.

The rejection ought be withdrawn.

Applicant notes the objection to claims 7-18. However, the objection states that when two claims are duplicate “it is proper after allowing one claim to object to the other as being a

substantial duplicate of the allowed claim”. However, the Examiner has not allowed either claim 7 or claim 13. Thus, the objection is improper. Based on the impropriety of the objection, the finality of the action ought be withdrawn.

With respect to the request to demonstrate substantive differences in scope, the Examiner’s attention is directed to the Amendment filed on September 21, 2007. Moreover, independent claim 7 is directed to an improvement comprising a pair of compression pads in a testing system for compression testing of concrete masonry units including first and second platens. Claim 13 specifies a testing system for compression testing of concrete masonry units comprising a compression testing apparatus including pistons operating first and second platens. Thus, claim 13 recites a compression testing apparatus including pistons. These elements are not recited in claim 7. Claim 7 recites a testing system including first and second platens. The action states that “from the specification, the testing system for compression testing of concrete masonry unit of claim 7 necessarily requires pistons to operate platens”. There is no support for this statement. Particularly, it is not apparent why there is any need to interpret claim 7 in view of the specification. A testing system including platens is clear. Applicant is entitled to claim the invention in as broad of terms as allowed by the prior art. The fact that the disclosed system happens to use pistons does not require that pistons be read into claim 7. It is during examination that claims are to be given their broadest reasonable interpretation consistent with the specification. However, the invention can be claimed more broadly than in the specification. Claim 7 specifying a testing system including first and second platens is consistent with the specification. It is improper for the Examiner to read into


this claim any limitations not present in the claim, simply because such limitations are present in a different independent claim, namely, claim 13 herein.

As such, the objection to claims 7-18 ought be withdrawn and the claims allowed.

Reconsideration of the application and allowance and passage to issue are requested.

Respectfully submitted,

Date: January 3, 2008



F. William McLaughlin
Reg. No. 32,273

WOOD, PHILLIPS, KATZ,
CLARK AND MORTIMER
Citigroup Center, Suite 3800
500 W. Madison Street
Chicago, IL 60661-2562
(312) 876-1800